City of Lafayette Staff Report

To: City Council

From: Mike Moran, Associate Engineer

Date Written: February 4, 2008

Meeting Date: February 11, 2008

Subject: 7 Crest Road – Request for landscaping and irrigation encroachment into the City's right-of-way along Crest Road and Middle Road.

Introduction

Paul G. Bennett and Diane H. Bennett own the property at 7 Crest Road. The Bennetts are requesting permission to add irrigation and landscaping at their corner property frontage along Crest Road and Middle Road. The addition of the irrigation and landscaping will require an encroachment agreement because the improvements will be added to the public right of way. Staff recommends approval of the agreement.

Discussion

The City's right-of-way at the subject property corner varies from approximately 16 feet from the edge of the paved road at the narrowest points along Crest Road and Middle Road to approximately 70 feet from the edge of the paved road at the intersection of Crest and Middle (see attached Planting and Irrigation Plans). This large frontage is not currently maintained with City forces and the homeowners have routinely performed weed abatement and grading activities to improve the drainage along the road shoulder. The subject owners now wish to install landscaping as a beautification project to the area.

Per staff's request, the improvement plans include a rock drainage swale along Middle Road and a soil drainage swale along Crest Road to convey storm water drainage. The plans also show the location of the proposed trees over 15 feet back from the edge of the existing road. At this time the City does not have further plans to widen Crest or Middle Road or to install improvements along the edge of the road in the near future. Staff believes the project provides some benefit in terms of visual and on-going maintenance of the area. The property owners understand that they are responsible for removing the encroaching improvements if the City deems necessary in the future. Based on these

considerations, staff recommends approval of this encroachment with the following conditions:

1. Place all irrigation main lines and valves within the home-owner's property boundary.

2. The City will reserve the right, if necessary, to require relocation or removal of the improvements located within the City right of way at the owner's expense in the future.

Fiscal Impact

None

Recommendation

Approve the encroachment into the City right of way along the property frontage of 7 Crest Road and authorize the Mayor to execute a landscape encroachment agreement with the applicants.

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
P.O. Box 1968)
Lafayette, CA 94549)

AGREEMENT

(Encroachment of Landscaping within a Public
Right-of-Way along Crest and Middle roads at 7 Crest Road, Lafayette)

This Agreement is entered into this 16 January 2008, between Paul G. and Diane H. Bennett ("Property Owner") and the City of Lafayette, a municipal corporation ("City").

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 7 Crest Road, Lafayette, California, APN 251-061-001 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to landscape the Property, which will encroach into the public right-of-way along Crest and Middle roads, at 7 Crest Road. In connection with his request for an encroachment permit, Property Owner has submitted plans to the City for the construction and placement of the landscaping.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of Landscaping.

Property Owner is permitted to place landscaping which substantially conforms to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along Crest and Middle roads at 7 Crest Road subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the landscaping without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of the landscaping within the right-of-way area as installed and maintained by Property Owner. Property Owner also assumes the risk of damage to landscaping installed in the right-of-way area.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the landscaping permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the "taking" of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a "taking", including reasonable attorneys' fees and costs, alleged to have resulted from the location of the landscaping within the right-of-way area allowed by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the landscaping. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain the Landscaping.

Property Owner is responsible for maintaining the landscaping described in Paragraph 1. Property Owner shall maintain the landscaping in a safe and attractive condition as an encroachment within the City's right-of-way area. The landscaping may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the landscaping, the City may give written notice of the deficiency to Property Owner who shall have 20 days to make the necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the landscaping, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the landscaping, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroaching landscaping. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the landscaping which encroaches after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the landscaping. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the landscaping described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:
City of Lafayette P.O. Box 1968 Lafayette, CA 94549

Notices to Property Owner shall be addressed:
Paul and Diane Bennett
7 Crest Road
Lafayette, CA 94549

When the Property Owner cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the landscaping.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

_____
Mayor

PROPERTY OWNERS

_____
Paul G. Bennett

_____
Diane H. Bennett

* Notarial Acknowledgment Required.

ATTEST:

_____
City Clerk

EXHIBIT A

The land referred to in this report is situated in the State of California, County of Contra Costa, City of Lafayette, and is described as follows:

Lot 42, Map of Hidden Valley Estates, Unit No. 2, filed March 12, 1940, Map Book 24, Page 750, Contra Costa County Records.

A.P. No. 251-061-001

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa }

On 2-4-08 (Date) before me, Joanne Lee Robbins, notary (Here Insert Name and Title of the Officer)

personally appeared Diane H. Bennett (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Joanne Lee Robbins (Signature of Notary Public)

JOANNE LEE ROBBINS
COMM. #1551436
Notary Public-California
CONTRA COSTA COUNTY
My Comm. Exp. Feb 10, 2009

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SANTA CLARA

On 01-18-08 (Date) before me, MARGARET CAMARILLO, NOTARY (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared PAUL G. BENNETT (Name(s) of Signer(s))

,

☑ personally known to me

☐ (or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

MARGARET CAMARILLO
Commission # 1477535
Notary Public - California
Santa Clara County
My Comm. Expires Mar 20, 2008

Place Notary Seal Above

Margaret Camarillo, Notary
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: MAINTENANCE AGREEMENT

Document Date: 1-16-08 Number of Pages: 4

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☑ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: SELF

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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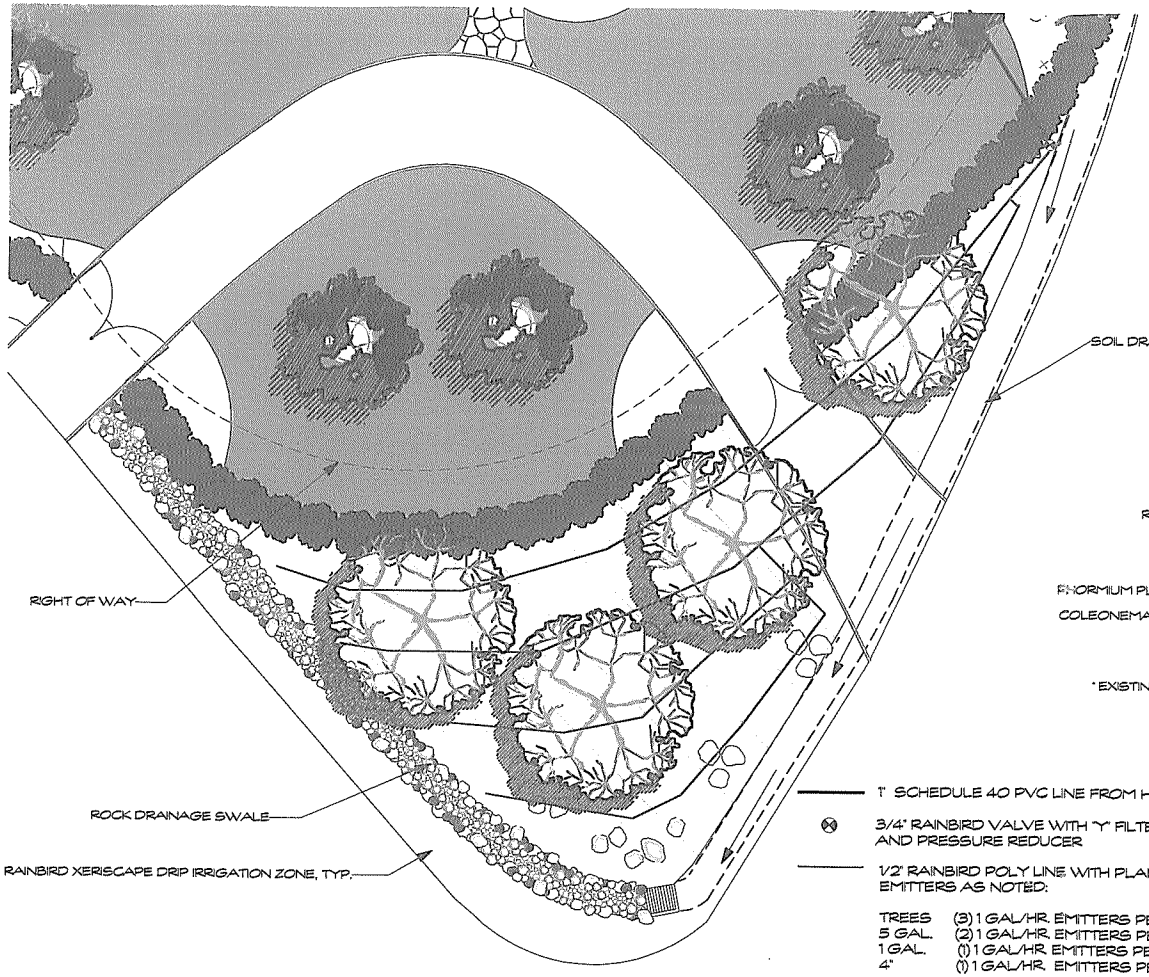


IRRIGATION PLAN

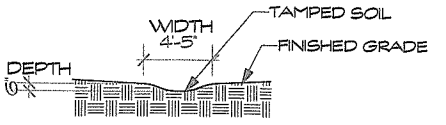
SCALE 1/16" - 1' - 0"

1" SCHEDULE 40 PVC LINE FROM HOUSE

3/4" RAINBIRD VALVE WITH "Y" FILTER AND PRESSURE REDUCER

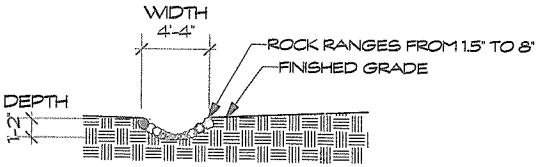
1/2" RAINBIRD POLY LINE WITH PLANT EMITTERS AS NOTED:

TREES	(3) 1 GAL/HR. EMITTERS PER PLANT
5 GAL.	(2) 1 GAL/HR. EMITTERS PER PLANT
1 GAL.	(1) 1 GAL/HR. EMITTERS PER PLANT
4"	(1) 1 GAL/HR. EMITTERS PER PLANT



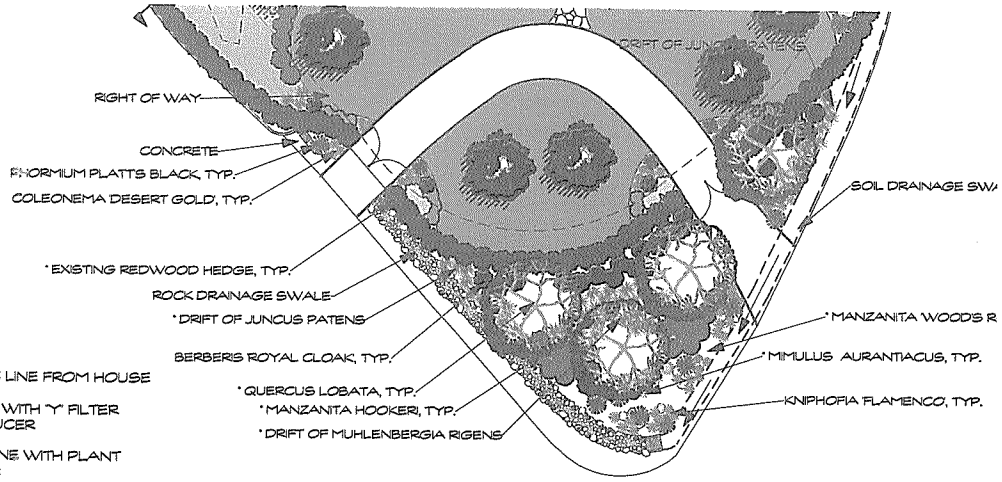
SOIL SWALE DETAIL

SCALE 1/8" - 1' - 0"



ROCK SWALE DETAIL

SCALE 1/8" - 1' - 0"



PLANTING PLAN

SCALE 1/32" - 1' - 0"

Sheet:	Date:	Revisions:	PROJECT:	DESCRIPTION:
1	11/12/07	1/15/08 1/29/08	THE BENNETT RESIDENCE 7 CREST ROAD LAFAYETTE, CALIFORNIA	PLANTING AND IRRIGATIONS PLANS

1 Northwood Dr. Ste.7
Orinda, CA 94563
ph. 925.254.4797
fx. 925.254.3211
C27/C53 lic.#702645

GARDEN LIGHTS